

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3847 OF 2005

IN

CRIMINAL APPEAL NO.301 OF 2005

Bharat Shrikant Naik ..Applicant

Vs.

State of Maharashtra ..Respondent

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Mr.A.P.Mundargi Adv. for the applicant.

Mr., A.P.P. for the State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

**DATE OF RESERVING
THE ORDER : 24.06.2005**

**DATE OF PRONOUNCING
THE ORDER : 01.07.2005**

P.C.:-

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant was working as Health Superintendent in Kirkee Cantonment Board, Kirkee Pune. On 18.1.2001, the complainant contacted the accused in his office and told him that he was interested to start cabin (workshop) near the P.C.M.T. Bus Stop, Khadki. He also asked the applicant to give permission to put such a cabin near the P.C.M.T. Bus Stop. Thereupon, the applicant

informed the complainant that no written permission can be granted. However, he would give oral permission. He also told the complainant that he would be required to pay Rs.10,000/- to the applicant for such permission. It is alleged that the applicant asked the complainant to bring the amount in the office of the Cantonment Board, Kirkee on 24.1.2001. The complainant therefore contacted the office of Anti-Corruption Bureau and lodged his complaint.

3. After going through the evidence adduced by the prosecution, the learned Special Judge, Greater Bombay by judgment and order dated 25.2.2005 convicted the applicant in Special Case No. 35 of 2001, for the offence under Sections 7 and 13(1) (d) r.w. 13(2) of the Prevention of Corruption Act, 1988.

3. Being aggrieved by the said judgment and order dated 25.2.2005 convicting the applicant, the applicant preferred Criminal appeal No. 301/2005. In the said appeal, the applicant came to be released on bail by this Court. Now this application has been preferred for suspension of conviction.

4. The learned counsel for the applicant has submitted that in appropriate cases the High Court on being satisfied about the need for suspending the order of conviction can grant interim stay in respect

of the order of conviction. In support of his contention he has placed reliance on the decision of the Supreme Court in the case of **K.C. Sareen Vs. C.B.I. Chandigarh reported in (2001) 6 SCC 584.** There can be no quarrel with the proposition that if the High Court is satisfied about the need of suspending the order of conviction it can grant interim stay. However, the main question is whether in the facts of the present case it can be said to be an appropriate case to suspend the conviction.

5. The learned counsel for the applicant has submitted that pending appeal if the conviction is not suspended the applicant will suffer irreparable loss because he may lose his post or be suspended, hence, the conviction should not be suspended.

6. The learned counsel for the applicant submitted that on the day when the trap was arranged no demand was made by the applicant. However, it is clear that on 18.1.2001 the applicant made a demand to the complainant and pursuant to the said demand, the complainant handed over the money on 24.1.2001. From the entire evidence on record including that of the panch witness, in my view, the involvement of the applicant in a case of corruption is clearly made out. Thereafter, it was contended by the learned counsel for the applicant that the complaint is politically motivated on account of union rivalry.

On going through the evidence, I find that there is sufficient material which brings out the complicity of the applicant in a case under the corruption Act. From the evidence on record, it cannot be said that a false complaint was lodged against the applicant.

7. In the case of K.C. Sareen (supra) the Supreme Court has held that if a public servant who is convicted becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. It is further held that when a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence, it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold any public office until he is exonerated after conducting a

judicial adjudication at the appellate or revisional level. It is to be noted that in the present case the applicant has been convicted in a case of corruption.

8. In a recent decision the Supreme Court in the case of **State of Maharashtra Vs. Gajanan & Anr.** reported in 2004 AIR SCW 80, has held that the power to suspend the order of conviction should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of conviction the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramification of keeping such conviction in abeyance. The Supreme Court further observed that the High Court failed to note the directions of the Supreme Court in the case of **K.C. Sareen**, wherein it is held that it is only in very exceptional cases that the Court should exercise such power of stay. The Supreme Court in the case of **State of Maharashtra V/s. Gajanan** (supra) has further observed that the High Court had not taken into consideration any of the above factors while staying the conviction and hence, the order of suspension of conviction came to be set aside.

9. Merely because the convicted person files an appeal and challenges the order of conviction, the Court should not suspend the operation of the order

of conviction. The Court has a duty to look at all aspects including the ramification of keeping such a conviction in abeyance. In my view, the conduct on the part of the applicant while holding a post as Health Superintendent would send a wrong message to the citizens in the local area of the Kirkee. Moreover it would also send a wrong message to the other employees in the Kirkee Cantonment Board if the order of conviction is suspended.

10. Considering all the facts of this case, I do not think that this a fit case wherein the conviction of the applicant can be suspended, hence the application is rejected.

11. Criminal Application is disposed of.

[SMT. V.K. TAHILRAMANI, J.]